IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE SIXTH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 9935 of 2004

Between:

Papuri Deveedu S/o. Yesu Ratnam
Resident of Chowdavaram, Guntur Rural Mandal Guntur District.

..... PETITIONER

AND

1 Banavath Lokhya S/o. Mouthya
R/o. Theegala Banjara Konijerla Mandal, Khammam District.
2 The Government of Andhra Pradesh rep. by its Prl. Secretary, Law, Courts and

Justice Department, Secretariat Buildings, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ order or direction more in the nature of writ of Mandamus declaring the action of the respondent to entertaining I.P.No.4 of 2004 on the file of Senior Civil Judge, Khammam as null and void and pass.

Counsel for the Petitioner:MR.V.H.V.R.R.SWAMY

Counsel for the Respondent No.2: GP FOR LAW & LEGISLATIVE AFFAIRS

The Court made the following :

ORDER:

Heard Counsel on record.

Notice before admission was ordered by this Court on 18-6-2004 and the matter is coming up for admission today.

Papuri Deveedu, the writ petitioner filed the present Writ Petition praying for a writ, order or direction more in the nature of writ of mandamus declaring the action of entertaining I.P.No.4/2004 on the file of Senior Civil Judge, Khammam as null and void and pass such other suitable orders.

The writ petitioner herein had averred that the 1st respondent in the Writ Petition, Banavath Lokhya, borrowed a sum of Rs.1,00,000/- from the writ petitioner and executed a demand promissory note on 18-9-2001 agreeing to repay the same with interest at 24% per annum and the 1st respondent failed to

pay the said amount and hence the writ petitioner filed O.S.No.3161/2002 on the file of III Additional Junior Civil Judge, Guntur which was decreed on 12-11-2002. The writ petitioner also filed E.P. and got the same transferred to the Principal Junior Civil Judge, Kothagudem. The writ petitioner also filed E.P. to arrest and detain the 1st respondent in civil prison which was numbered as E.P.No.611/2003 and the learned Judge after considering the matter passed an order on 5-3-2004 and the said E.P. was allowed. The 1st respondent filed E.A.No.85/2004 which was dismissed on 30-1-2004 and the 1st respondent filed C.R.P.No.568/2004 which was disposed of on 6-2-2004 directing the 1st respondent herein to file his counter within a period of ten days in the E.P. from the date of the order and the counter was filed and after hearing both the parties, again the learned Judge allowed E.P.No.611/2003 on 5-3-2004. With a view to avoid the same, the 1st respondent filed I.P.No.4/2004 on the file of Senior Civil Judge, Khammam. It is stated that the 1st respondent had furnished the original address at a particular place but however the I.P. was filed showing the change of address. It is stated that since the 1st respondent is residing in Agency Area the Provincial Insolvency Act 1920 is not applicable and hence to get over the same the 1st respondent had done so. Thus the 1st respondent played fraud on the Court. Several other averments also had been made in the affidavit filed in support of the Writ Petition.

In I.P.No.4/2004 on the file of Senior Civil Judge, Khammam the writ petitioner is shown as the 2nd respondent. Several details relating thereto need

not be dealt with at length in the present Writ Petition since they may not be relevant for the present purpose. As can be seen from the facts of the case, it is not a question of inherent lack of jurisdiction but however the jurisdiction to entertain the I.P. is questioned on certain factual aspects. It is needless to say that these matters may have to be considered by the concerned insolvency Court. The Provincial Insolvency Act, 1920, in short referred to as "Act" for the purpose of convenience is an Act to consolidate and amend the law relating to insolvency as administered by Courts having jurisdiction outside the Presidency Towns. Section 3 of the Act dealing with Insolvency jurisdiction reads as hereunder :

> (1) The District Courts shall be the Courts having jurisdiction under the Act:
>
> **Provided that the State Government may, by notification in the Official Gazette, invest any Court subordinate to a District Court with jurisdiction in any class of cases, and any Court so invested shall within the local limits of its jurisdiction have concurrent jurisdiction with the District Court under this Act.**
>
> **(2) For the purposes of this Act, a Court of Small Causes shall be deemed to be subordinate to the District Court.**

Section 5 of the Act dealing with General powers of Courts reads as hereunder :

1. **Subject to the provisions of this Act, the Court, in regard to proceedings under this Act, shall have the same powers and shall follow the same procedure as it has and follows in exercise of original civil jurisdiction.**

2. **Subject to as aforesaid, High Courts and District Courts, in regard to proceedings under this Act in Courts subordinate to them, shall have the same powers and shall follow the same procedure as they respectively have and follow in regard to**

civil suits.

Section 6 of the Act deals with Acts of insolvency. Section 9 of the Act deals with Conditions on which creditor may petition and Section 10 of the Act deals with Conditions on which a debtor may petition. Section 18 of the Act deals with Procedure for admission of petition and the same reads as hereunder :

> "The procedure laid down in the Code of Civil Procedure, 1908, with respect to the admission of plaints, shall, so far as it is applicable, be followed in the case of insolvency petitions."

Section 25 of the Act deals with Dismissal of petition which reads as hereunder :

1. **In the case of a petition presented by a creditor, where the Court is not satisfied with the proof of his right to present the petition or of the service on the debtor of notice of the order admitting the petition, or of the alleged act of insolvency, or is satisfied by the debtor that he is able to pay his debts, or that for any other sufficient cause no order ought to be made, the Court shall dismiss the petition.**

2. **In the case of a petition presented by a debtor, the Court shall dismiss the petition if it is not satisfied of his right to present the petition.**

Sub-section (2) specifically says that in the case of a petition presented by a debtor, the Court shall dismiss the petition if it is not satisfied of his right to present the petition.

The provisions of the Code of Civil Procedure are applicable to insolvency proceedings if such provisions are not in conflict with the specific provisions

under the Act. When that being so, the petitioner is having an effective alternative remedy and on the ground that some question of jurisdiction is involved, the extraordinary jurisdiction of this Court cannot be invoked under Article 226 of the Constitution of India. A Division Bench of Kerala High Court in K.P. Jayakumar Vs. K.Ravindran **while dealing with the aspect of dismissal of the Insolvency Petition for default and restoration thereof held that where there is no provision under the Insolvency Act for filing such restoration application, aggrieved party would have the remedy of filing an application under Order 9 C.P.C. and where such application is dismissed as against such an order, Appeal under Order 43 Rule 1 C.P.C. by the aggrieved party can be maintained. Reliance also had been placed on** Ramnad D.C. Coop. Bank Vs. Official Receiver **and** P.China Veerayya Vs. T.Gopalakrishna Rao . **In the light of the same, this Court is of the considered opinion that the Writ Petition is devoid of merit inasmuch as the ground of jurisdiction and the ground of fraud, the twin grounds which had been raised, may have to be adjudicated in the backdrop of factual controversy which can be heard only by the concerned Insolvency Court. It is needless to say that the writ petitioner is at liberty to move any appropriate application in this regard if he is so advised. Except making this observation, no further relief can be granted in the present Writ Petition.**

The Writ Petition is accordingly hereby dismissed. No order as to costs.

Justice P.S. Narayana

Date : 6-6-2005

L.R. copy to be marked : YES / No

AM

ASSISTANT REGISTRAR

To

(one copy to Hon'ble Sri Justice P.S. Narayana for his Lordship's perusal)

1. The Principal Secretary, Law, Courts and Justice Department, Secretariat Buildings, Hyderabad.

2. Two C.Cs. to Government Pleader for Law and Legislative Affairs, High Court of Andhra Pradesh, Hyderabad.

3. The Under Secretary, Union of India, Ministry of Law, Justice and Company Affairs, New Delhi.

4. The Secretary, A.P. Advocates Association Library, High court Buildings, Hyderabad.

5. 8 L.R. copies

6. Two C.D. copies